IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10468 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAMIRJI BHIKHAJI THAKOR

Versus

HAKMATSINH VARGHAJI RAJPUT

Appearance:

1. Special Civil Application No. 10468 of 2000

MR BN PATEL for Petitioner No. 1

MR SHIRISH JOSHI with MR BAIJU JOSHI for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2,4

RULE SERVED for Respondent No. 3

MR BD DESAI, ASST. GOVERNMENT PLEADER for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 19/08/2004

ORAL JUDGEMENT

1. The order dated 31.8.2000 passed by the respondent No. 5 is challenged in this petition under Article 226 of the Constitution of India.

2. Short facts of the case are:

2.1 The petitioner had proposed a society for registration known as Vasana (Kuda) Seva Co-Operative Society Limited. The respondent No. 1 had also submitted a proposal for registration of a Society known as Vasana (Kuda) Seva Co-Operative Society Limited. It appears that the proposal of respondent No. 1 was submitted on 6th March 1999 and the proposal of the petitioner Society was submitted on 23rd April 1999 but it reached before District Panchayat on 22.6.1999. In the meeting of the Committee of the District Panchayat on 13.5.1999, it was decided to grant registration to the respondent No.1 Society. The petitioner herein, therefore, preferred appeal before the Additional Registrar [Appeals] against the said decision dated 13.5.1999 and in the said appeal, the additional Registrar passed the order on 28.1.2000 whereby the appeal was not admitted and it was observed by the Additional Registrar that by the impugned decision, it does not come on record that the approval is granted to the opponent No.2 Society therein [which is respondent No.1 herein] and it was further observed that after getting proper details, if any dispute remains, then proper proceedings may be undertaken. It is an admitted position that the petitioner has not challenged the order dated 28.1.2000 passed by the Additional Registrar [Appeals]. It further appears that thereafter the respondent No.1 preferred Revision before the State Government against the order of the Additional Registrar [Appeals]. The matter was considered by the State Government, and on behalf of the petitioner nobody remained present and a request was made for grant of adjournment. Since earlier adjournments were granted, it was decided by the Deputy Secretary to proceed on merits, and it was found ultimately by the State Government that the order of the additional registrar is self-contradictory and ultimately the Revision was allowed and the registration granted vide resolution dated 13.5.1999 of the Committee of the District Panchayat was approved and it was ordered to issue registration certificate. It is under these circumstances the petitioner has preferred this petition.

3. Heard Mr. B.N. Patel for the petitioner, Mr. Joshi for respondent No.1 and Mr. Desai, learned Assistant Government Pleader for respondents No. 2,4 and

4. Mr. Patel has mainly raised the contention that there was no recommendation by the Committee for granting registration to the respondent No.1 Society, and he further submitted that such an item was not there in the agenda of the Committee. Therefore, he submitted that the Committee of the District Panchayat could not have accepted the proposal by moving the item from the Chair. In paragraph 4 of the affidavit-in-reply filed on behalf of the respondent No.1 it has been stated that the proposal was made on 6th March, 1999 whereas the proposal so far as the present petitioner was made on 23rd April 1999 and the same reached the District Panchayat on 22nd June 1999. Therefore, when the Committee of the District Panchayat considered the matter on 13th May 1999, the proposal of the petitioner Society was not before the District Panchayat. Under these circumstances, for village Vasana [Kuda] if there was only one proposal and the same is considered by the Committee of the District Panchayat and when there was already a No Objection Certificate by the existing Society, it cannot be said that such a decision would be without following the mandatory procedure as is sought to be canvassed by Mr. Patel on behalf of the petitioner.

5. Mr. Patel also submitted that as such, the No Objection Certificate was in favour of the petitioner Society and he submitted that benefit of the said No Objection Certificate could not have gone to the respondent No.1 Society. It is true that in the resolution of Kuda Vasana Group Seva Sahakari Mandli Limited there is a reference to the application made by Koli Hamirji Bhikhaji and further that the said Kuda Vasana Group Seva Sahakari Mandli Limited has no objection if another Society is formed and the same would not adversely effect them. The resolution is dated 29.4.1999 and if the Committee of the District Panchayat considered the matter on 13.5.1999, the resolution of No Objection was well in existence. Further, the resolution show that not only the respondent No.1 Society is granted registration but there also other cooperative Societies which have been recommended for registration with the respondent No.1. The interpretation of the resolution dated 29.4.1999 as sought to be canvassed by Mr. Patel for the petitioner that it would operate only in favour of the petitioner and not for the respondent No.1 cannot be accepted because the said Kuda Vasana Group Seva Sahakari Mandli Limited has not challenged the said decision whereby the respondent No.1 Society has come into existence. Moreover, such a resolution giving No

Objection or certificate that the existing society will not have any adverse effect can be only restricted to the formation of new Society in the working area and cannot be restricted to the Chief Promoter of the Society. If the area of operation of the petitioner Society as well as the respondent No.1 society are common and both are for village Vasna [Kuda], and, therefore, it cannot be said that the resolution recommending registration would be illegal merely because in the said resolution of the other existing Society there is reference to the name of the Chief Promoter of petitioner Society.

6. It is also an admitted position that the petitioner has not challenged the decision of the Additional Registrar [Appeals] whereby a right was reserved to the petitioner to initiate appropriate proceedings after proper details are obtained and if any dispute remains. Before the State Government in Revisional jurisdiction, the petitioner has not participated in the proceedings and the advocate of the petitioner did not remain present. If on account of non-availability of the advocate a request for adjournment is rejected and thereafter if the State Government has proceeded on merits, it cannot be said that the State Government has committed an error in exercise of its jurisdiction. Moreover, reading the order, it cannot be said that the Revisional Authority has committed any jurisdictional error nor can it be said that the order is so perverse which would call for interference by this Court in exercise of powers under Article 227/226 of the Constitution.

7. Further, there is no dispute on the point that the registration has been granted to the respondent No.1 Society in pursuance of the impugned order passed by the State Government, and the said registration has been granted on 6.9.2000. However, it is the contention of the learned advocate for the petitioner that even if the registration is granted, in view of the order dated 4.10.2000 passed by this Court whereby the operation of the impugned decision of the State Government was stayed, the Society could not have started functioning. As against the same, it has been submitted by Mr. Joshi appearing for the respondent No. 1 that not only registration granted on 6.9.2000 but thereafter the licence for doing business was also granted on 25.9.2000 by the Assistant Agricultural Officer and the Society is functioning since then. Under these circumstances, it appears that when the order dated 4.10.2000 was passed by this Court, the respondent No.1 Society had already come into existence by grant of registration on 6.9.2000. If

the impugned order was already implemented on that date, it was for the petitioner to seek appropriate interim relief prohibiting the functioning of the Society or otherwise. No such relief is either prayed or granted by this Court pending the petition. Therefore, as a consequences thereof, as on today, when the matter is considered for final hearing, the respondent No. 1 society has not only come into existence since last about 4 years but it is also functioning since then. Therefore, while examining the challenge to the impugned order, the aforesaid aspect is required to be kept in mind because an outcome of the petition, if the impugned order is set aside it may consequently also result into cancellation of the registration and may also further result into wiping out the effect of the functioning already made by the respondent No.1 society.

8. As observed earlier, the respondent No.1 is functioning since about 4 years and now if the challenge is entertained and accepted, it may also result into wiping out the effect of functioning of about 4 years and may also result into rendering the Society into a dead position and consequently it may lead to inconvenience to the members of the Society and large number of other legal complications for recovery etc., and, therefore also, it would not be a case to exercise the power by this Court under Article 226 of the Constitution which result into cancelling the registration of the respondent No.1 Society which is functioning since last 4 years.

9. Under the above circumstances, no case is made out for interference, and this petition is dismissed. Rule is discharged. Interim relief vacated. There shall be no order as to costs.

[JAYANT PATEL, J.]
mathew